

SENATE FINANCE COMMITTEE
SECOND SPECIAL SESSION
July 18, 2019
3:03 p.m.

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CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at 3:03 p.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Lyman Hoffman
Senator Donny Olson
Senator David Wilson

MEMBERS ABSENT

Senator Peter Micciche
Senator Mike Shower
Senator Bill Wielechowski

ALSO PRESENT

Neil Steininger, Chief Budget Analyst, Office of Management and Budget, Office of the Governor; Paloma Harbour, Division Director, Office of Management and Budget; David Teal, Director, Legislative Finance Division; Senator Cathy Giessel; Senator Jesse Kiehl; Senator Elvi Gray-Jackson; Representative Kelly Merrick; Representative Andy Josephson; Representative Geran Tarr; Representative Dan Ortiz; Representative Bart LeBon; Representative Sara Hannan; Representative Cathy Tilton; Representative Neal Foster; Representative Scott Kawasaki.

SUMMARY

OFFICE OF MANAGEMENT and BUDGET: OVERVIEW and IMPACTS OF CBR SWEEP

DAVID TEAL, DIRECTOR, LEGISLATIVE FINANCE DIVISION

^OFFICE OF MANAGEMENT and BUDGET: OVERVIEW and IMPACTS OF
CBR SWEEP

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Co-Chair Stedman remarked that it was substantially difficult to move money to and from the Constitutional Budget Reserve (CBR). He remarked that the concern was about the impacts of the CBR sweep. He remarked that it was a legal and accounting question about what funds could be swept. He remarked that the Office of Management and Budget (OMB) had provided a list of what would be considered "sweep-able." He shared that the Legislative Auditor had provided a list of what would be considered previously sweep-able. He remarked that the committee would continue to understand the mechanics of the sweep. He added that there were also concerns about the reverse sweep. He shared that the legislature must proceed with the understanding that there would not be a vote to use the money from the CBR.

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NEIL STEININGER, CHIEF BUDGET ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, introduced himself.

PALOMA HARBOUR, DIVISION DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, introduced herself.

Mr. Steininger discussed the presentation, "State of Alaska; Office of Management and Budget; Constitutional Budget Reserve Sweep Overview; Presentation to the Senate Finance Committee; July 18, 2019" (copy on file). He highlighted slide 3, "Sweep Guidelines":

The CBRF and its repayment or "sweep" provision

The Constitutional Budget Reserve Fund ("CBRF") was established by constitutional amendment in 1990 in article IX, section 17 of the Alaska Constitution. There are four subsections to this constitutional amendment:

(a) Revenue into the CBRF - money received from the termination of administrative and judicial proceedings involving mineral revenues is deposited into the CBRF;

(b) Expenditures from the CBRF by majority vote only if - "the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year" and the appropriation is limited to the amount necessary to make total appropriations equal to the amount appropriated in the previous year;

(c) Expenditures from the CBRF by a three-fourths vote of the members of each house - the Legislature can appropriate from the fund for any public purpose if such a supermajority vote is obtained; (d) Repayment requirement - "If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law."

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Senator Hoffman queried the amount of money owed to the CBR.

Mr. Steininger replied that it was \$14 billion.

Co-Chair Stedman shared that the CBR had accumulated debt over the most recent six years.

Co-Chair von Imhof asked the method in determining whether the \$14 billion was enough.

Mr. Steininger responded that the revenue into the CBR was dictated by the constitution, so it was not necessarily a choice of how much money would be put into the CBR.

Ms. Harbour furthered that it was known how much was owed to the CBR based on how much was withdrawn from the CBR.

Co-Chair von Imhof noted that \$14 billion was withdrawn from the CBR, so that was the "line or the norm." She also asserted that it was anomaly, meaning that it was impossible to reach \$14 billion again, because the volumes of revenue stream would not meet that amount.

Ms. Harbour replied that the \$14 billion was owed, because that amount of money was withdrawn over time.

Mr. Steininger furthered that the repayment provision was in the constitution, and was intended to be a constraint on borrowing from savings. He explained that the borrowing of \$14 billion was a fact that the state must contend with, and consider when making budget decisions.

Co-Chair Stedman announced that it was considered an interest free loan.

Mr. Steininger looked at slide 5, "Sweep Guidelines Continued":

- Funds for which the legislature has retained the power to appropriate from and that are not available to pay expenditures without further legislative appropriation - subject to the sweep unless a constitutionally dedicated fund or not in the general fund
- Funds that list purposes for which money in the fund can be used but still require a second appropriation to spend from the fund - subject to the sweep unless a constitutionally dedicated fund or not in the general fund
- Money in funds that is already validly appropriated to a particular purpose - not subject to the sweep
- Federal funds are not considered subject to the sweep
- Other trust funds such as the Public Employees Retirement Fund that can only be used for a specific stated purpose under law such as constitutionally permissible dedicated funds and pension funds should not be swept
- Donations - the portion of a fund that comprises money donated to a fund for a particular purpose should not be included in the sweep
- Public corporation funds

- Public corporation accounts/funds are not subject to the sweep unless the money is in an account or fund that cannot be accessed by the corporation without an additional legislative appropriation (eg. PCE)
- Receipts subject to refund - eg. Alaska Marine Highway, University tuition or student housing, not subject to the sweep

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Senator Hoffman remarked that the second to last bullet, and noted that the prior governors did not believe that the Power Cost Equalization (PCE) to be a "sweep-able" item, which he agreed. The current administration believed the opposite, and felt that it would be determined through the legal process.

Mr. Steininger looked at slide 6, "Sweep Information and Details":

- Estimated amount to cover all program shortfalls \$115 million UGF
 - Section 8 would appropriate the funds needed to address the shortfall
- All accounts will be swept after the reappropriation period
 - FY19 expenditure true-up period
 - Finalized in late August - early September
 - Fund balances will be known at this time
- Notable differences between Legislative Audit and OMB/Law/Division of Finance
 - Power Cost Equalization
 - Higher Education Investment
 - Program Receipts and Carryforward
 - Vaccine Assessment Account - under prior fund structure

Mr. Steininger remarked that OMB had not received every bill from every vender, so the state was currently in a bit of an unknown time. He remarked the notable differences between the list from Legislative Audit; Legislative Finance Division; and OMB. He noted all of the items on the slide's list.

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Senator Olson asked how long it would be until the monies in the account were spent.

Mr. Steininger asked for clarification.

Senator Olson asked how the money would return to the PCE, if the PCE was considered a non-sweep-able fund.

Mr. Steininger replied that he was not an accountant and could not speak to how the money was actually transferred.

Co-Chair Stedman asked if the question was - if the fund was swept whether there would be appropriations.

Mr. Steininger responded that they were categorized depending on the different funds.

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Co-Chair Stedman recalled a meeting from July 9, 2019, at which the committee was informed that the money would not be appropriated out of the scholarship fund after June 30, 2019. He stated that recipients were notified that the checks would not be in the mail, because there were no fund balances available. He assumed that the PCE had similar notifications, until funds were available.

Mr. Steininger replied that he was not aware of exactly which notifications had gone to multiple parties by the various departments with programs that were affected by the PCE and higher education funds. Those two funds had the most immediate issues with expenditures.

Co-Chair Stedman asked that Mr. Steininger provide information at a later date about the formal notifications from OMB in connection with PCE.

Senator Hoffman stated that he would ask that specific question to the recipients of the higher education fund, and the PCE fund. He understood that the notification had been given to the recipients of the higher education fund. He explained that he, as a resident of Bethel, was eligible for PCE assistance, and he had not been notified. He wondered why the administration notified one group of people affected by the sweep, and not others.

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Co-Chair Stedman asked that the presenter share which recipient groups had and had not received notifications.

Co-Chair von Imhof appreciated the discussion about the Alaska Performance Scholarship (APS).

Co-Chair Stedman suggested that there be a discussion of the list on slide 7.

Mr. Steininger discussed slide 7, "Funds Subject to Sweep Not Listed on Legislative Audit Presentation":

1005 General Fund/Program Receipts	1201 Commercial Fisheries Entry Commission Receipts
1049 Training and Building Fund	1211 Cruise Ship Gambling Tax
1109 Test Fisheries Receipts	1213 Alaska Housing Capital Corporation Receipts
1139 AHFC Dividend	1214 Whittier Tunnel Toll Receipts
1140 AIDEA Dividend	1218 146(c)
1141 RCA Receipts	1226 Alaska Higher Education Investment Fund
1150 ASLC Dividend	1234 License Plates
1154 Shore Fisheries Development Lease Program	1247 Medicaid Monetary Recoveries
1155 Timber Sale Receipts	1249 Motor Fuel Tax Receipts
1156 Receipt Supported Services	1254 Marijuana Education and Treatment Fund
1162 Alaska Oil and Gas Conservation Commission Rcpts	
3205	
Alaska Historical Commission Receipts Account (Partially Sweep)	
1169 PCE Endowment Fund	3223 Abandoned Vehicle Fund
1173 Miscellaneous Earnings	3233 Fish and Game Civil Fines and Penalties
1195 Snow Machine Registration Receipts	N/A
Reappropriations of FY19 Operating Appropriations	
1200 Vehicle Rental Tax Receipts	

Co-Chair Stedman requested that acronyms not be used in the presentation.

Mr. Steininger explained the meanings of the acronyms.

Co-Chair Stedman wondered whether there would be a trigger of operational challenges when the account balances went to zero on July 1, 2019.

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Mr. Steininger replied that there were no operational concerns related to the dividends. He stated that several other items on the list had operational impacts. He highlighted the education and treatment fund had appropriations that exceeded the anticipated revenue.

Co-Chair Stedman looked at the license plate provision, and wondered whether there was another operational issue.

Mr. Steininger replied in the affirmative. He agreed to provide further information.

Mr. Steininger looked at "FY20 Operating Budget Issues Related to CBR Sweep" (copy on file).

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Co-Chair Stedman looked at slide 8, and the list of funds. He noted that the dollar amount was approximately \$115 million, but it was the shortfall amount. He queried the estimate of the sweep amount.

Mr. Steininger replied that the current sweep estimate was in the range of \$2 billion.

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Co-Chair Stedman asked for more specifics.

Mr. Steininger looked at the middle section of the document, which had several items in the Department of Administration (DOA) Office of Public Advocacy, Public Defenders Agency, the Department of Commerce, Community and Economic Development (DCCED) Rural Energy Assistance Program, several items in the Department of Corrections

(DOC), the items in the Higher Education Fund, Library Operations, and laboratory services in Department of Public Safety (DPS). He stated that the Department of Revenue (DOR) had appropriations from the funds for the management of the funds, so much of the operations from the Treasury Division were funded with some of the funds. The other two items were the re-appropriation of operating budget appropriations that lapsed in FY 19.

Co-Chair Stedman asked for explanation.

Mr. Steininger replied that in the Governor's Office and Legislative Branch there were unspent monies from FY 19 that were re-appropriated to capital projects. He stated that there was guidance from the Department of Law (LAW) that those balances were subject to the sweep.

Co-Chair Stedman asked whether the discussion of the slide was complete.

Mr. Steininger replied that he was looking at the document that showed the budget issues related to the CBR sweep. He noted that one of the sections showed the issues related to the sweep of carryforward balances. The primary issue was the Division of Corporations, Business, and Public Licensing in DCCED. He noted that it was listed as unknown, because there was not a good estimate of the amount of carry-forward balance that would be swept. He explained that the operational issue was that the division operated on a two-year cycle for their licensing, so they relied on the ability to carry the first year of revenue to operations in the second year. He explained that many others with carry forward balance would be collecting revenues through the course of the year, and the issues would not be as pronounced immediately, but would become issues later in the fiscal year. The final section were areas where general tax revenues populated a fund.

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Co-Chair Stedman wondered whether there was an affect on the ability to service the securitization of the tobacco bonds.

Mr. Steininger replied that it was tobacco taxes that populated the funds and were used in the Department of

Health and Social Services (DHSS). He stated that it was not the tobacco securitization.

Senator Hoffman noted that seniors had been notified that they would no longer receive the Senior Benefits. He did not see on the list where that fund was a sweep-able item.

Mr. Steininger replied that the Senior Benefits was funded with general funds, so was not related to the issue of the reverse sweep.

Senator Hoffman wondered what authority the administration sent out notification to senior population.

Mr. Steininger replied that the item was part of the vetoes of the Operating Budget.

Senator Hoffman stressed that average annual payment that those customers in the community of Noorvik, was \$2077 per year per customer. He stressed that the communities in his district did not have cash available, and remarked that it was a substantial budget hardship for those individuals.

Co-Chair von Imhof remarked that a three-quarter vote would affect all the funds.

Mr. Steininger felt that the question could be answered with slide 4.

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Senator Bishop noted the third bullet on slide 5, and felt that the subjects were not subject to the sweep. He remarked that Ms. Harbour understood how those funds were collected. He wanted to ensure that his comments would help the working people of Alaska. He felt that the Department of Labor and Workforce Development (DLWD) might have a potential hole in their budget.

Ms. Harbour stated that the list was preliminary with rough estimates.

Co-Chair Stedman remarked that the list may grow and the impacts would expand until a determination of a solution.

Mr. Steininger addressed slide 4, "Potential Solution":

An amount equal to deposits in the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) for fiscal year 2019 from subfunds and accounts in the general fund including the power cost equalization endowment fund (AS 42.45.070) by operation of article IX, sec. 17(d), Constitution of the State of Alaska, not to exceed the amount necessary after appropriations and deposits to the subfunds and accounts from fiscal year 2020 revenues, to fund appropriations from those subfunds and accounts made in ch. 1 -3, FSSLA 2019, and any other appropriation bills effective in fiscal year 2020, the general fund to the subfunds and accounts from which those funds were deposited into the budget reserve fund.

Ms. Harbour furthered that it included PCE.

Mr. Steininger stated that the intention of the language was to be broad enough to include all the impacts of the sweep to ensure that all impacts were met in a way that was robust enough to not worry whether an appropriation to fill a hole would be insufficient.

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Co-Chair Stedman noted that the first option would be to do nothing and a second option would be to have a second appropriation bill to backfill all negative fund balances that would be needed for FY 20.

Mr. Steininger replied that the potential solution displayed in the presentation would pay back approximately \$2 billion of the debt to the CBR.

Co-Chair Stedman shared that there would likely be a draw from the CBR.

Senator Hoffman looked at slide 8, "FY2020 Estimated Program Shortfall Due to Sweep (\$ Thousands)":

Shortfalls Due to Sweep:

- Alaska Energy Authority - Power Cost Equalization: \$32,355.0
- Alaska Court System - Trial Courts: \$1,198.0

- Dept. of Commerce - Corporation Business and Professional Licensing
 - Dept. of Corrections - Physical Health Care: \$4,045.3
 - Dept. of Corrections - Population Management: \$4,036.4
 - Dept. of Education - Alaska Performance Scholarship Program: \$11,750.0
 - Dept. of Fish and Game - Commercial Fisheries Entry Commission Receipts: \$5,142.9
 - Dept. of Health and Social Services - Vaccine Assessment Program: \$21,000.0
 - Dept. of Health and Social Services - Alcohol Receipts Shortfall: \$1,542.5
 - Dept. of Health and Social Services - Tobacco Receipts Shortfall: \$2,626.5
 - Dept. of Law - Civil Division, Regulation Affairs Public Advocacy: \$2,384.1
 - Dept. of Law - Criminal Division, Criminal Justice Litigation: \$1,602.7
- *See full list provided in packets: FY20 Operating Budget Issues Related to CBR Sweep

Senator Hoffman wondered how the administration would fund the shortfall.

Ms. Harbour replied the estimated total needed to fill the hole was approximately \$115 million, and the proposed solution on slide 2 would fund those shortfalls with the general fund.

Senator Hoffman wondered where the general fund was at.

Co-Chair Stedman noted that there were several accounts from which to draw, and the Legislative Finance Division (LFD) would be discussing the different balances.

^DAVID TEAL, DIRECTOR, LEGISLATIVE FINANCE DIVISION

[4:07:35 PM](#)

DAVID TEAL, DIRECTOR, LEGISLATIVE FINANCE DIVISION, looked at slide 3, from the OMB presentation, "Sweep Guidelines":

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(a) Revenue into the CBRF - money received from the termination of administrative and judicial proceedings involving mineral revenues is deposited into the CBRF;

(b) Expenditures from the CBRF by majority vote only if - "the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year" and the appropriation is limited to the amount necessary to make total appropriations equal to the amount appropriated in the previous year;

(c) Expenditures from the CBRF by a three-fourths vote of the members of each house - the Legislature can appropriate from the fund for any public purpose if such a supermajority vote is obtained; (d) Repayment requirement - "If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law."

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Mr. Teal displayed the document titled, "Bold items are unconstitutional under Hickel v. Cowper":

Sec. 37.10.420. "Money available for appropriation" defined.

(a) For purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,

(1) "the amount available for appropriation" or "funds available for appropriation" means

(A) the unrestricted revenue accruing to the general fund during the fiscal year;

(B) general fund program receipts as defined in AS 37.05.146;

(C) the unreserved, undesignated general fund balance carried forward from the preceding fiscal year that is not subject to the repayment obligation imposed by art. IX, sec. 17(d), Constitution of the State of Alaska; and

(D) the balance in the statutory budget reserve fund established in AS 37.05.540;

(2) "the amount appropriated for the previous fiscal year" means the amount appropriated from the

(A) constitutional budget reserve fund under the authority granted in art. IX, sec. 17, Constitution of the State of Alaska; and

(B) same revenue sources used to calculate the money available for appropriation for the current fiscal year; and

(3) "the amount of appropriations made in the previous calendar year for the previous fiscal year" means appropriations made from sources identified in (2) of this subsection for a fiscal year that were enacted during the calendar year that ends on December 31 of that same fiscal year.

(b) If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Administration shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much of it as is necessary to complete the repayment. The transfer shall be made on or before December 16 of the following fiscal year.

(c) In this section, "unrestricted revenue accruing to the general fund" or "unreserved, undesignated general

fund balance carried forward" is money not restricted by law to a specific use that accrues to the general fund according to accepted principles of governmental or fund accounting adopted for the state accounting system established under AS 37.05.150 in effect on July 1, 1990.

(d) An appropriation under art. IX, sec. 17(b), Constitution of the State of Alaska, requires an affirmative vote of the majority of the members of each house of the legislature. An appropriation under art. IX, sec. 17(c) requires an affirmative vote of three-fourths of the members of each house of the legislature.

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Co-Chair von Imhof queried the definition of "appropriation" when the legislature had set up a statute to create a formula for appropriation. She surmised that the Higher Education Fund was set up to appropriate, based on the number of students; versus, putting into the budget every year by guessing the number of applicants. She wondered whether the Court rule to say that statute was an appropriation.

Mr. Teal used the example of the Vaccine Assessment Fund. He stated that it had previously been subject to the sweep, and was still currently subject to the sweep, even though the law made it non-sweepable. That law did not take effect until July 1. He stated that the fund was just like scholarships, in that the statutes were changed.

Co-Chair von Imhof felt that a possible solution in the previous presenter's slides would be to include something to further clarify the meaning of an appropriation.

Mr. Teal replied there could have been statutory changes to avoid the impacts of the expansion of the sweep.

Co-Chair von Imhof wondered whether there was a conflict with Hickel v. Cooper.

Mr. Teal replied in the affirmative.

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Senator Wilson surmised that the information was to change the statute to not end in this circumstance.

Mr. Teal agreed, but it was too late to change the statute.

Senator Wilson noted the option to reverse the sweep. He wanted to find the quickest path forward to lift the burden.

Mr. Teal replied that he did not believe the issue was constitutionality in terms of the sweepable decision. He felt that the constitution did not provide enough guidance. He asserted that the constitution stated that, "you shall implement this by law." He felt that the problem was that the statutory guidelines were missing, and it was too late to implement statutory guidelines.

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Mr. Teal looked at the document title, "Funds Subject to Sweep" (copy on file).

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Mr. Teal looked at page 2.

Mr. Teal continued to address the spreadsheet.

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Senator Wilson wondered whether the ERA be protected by Article 9, Section 7 of the constitution by dedicated funds, and then returning to Section 15, which addresses the Permanent Fund: "all tax proceeds should not be dedicated for an purpose except for Section 15."

Mr. Teal replied that the section also stated, "the Earnings Reserve was general fund, unless otherwise provided by law."

Senator Olson remarked that the Hickel v Cooper opinion seemed to be in conflict with the Wielechowski case. He asserted that it seemed that there was advocacy that the answer to the question of sweeping versus non-sweeping. He felt that the real answer was that the ERA should be sweepable and go into the general fund.

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Mr. Teal replied that Senator Wielechowski noted the conflict between the two rulings. He stated that, under the new ruling, he felt that the ERA was in the general fund, and was subject to the sweep.

Mr. Teal continued that there would be incredible pressure to reverse the sweep, if the ERA were subject to a sweep, because there would be no dividends.

Mr. Teal continued displaying the spreadsheet.

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Co-Chair Stedman noted that the meeting had 15 minutes remaining.

Co-Chair Stedman shared that there was reverse sweep language in the budget bill, but there were not enough votes to implement it.

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Senator Olson looked at endowments, and how they provided services. He looked at PCE, and noted that the money came from the interest to cut down on the power issues for some subscribers and provided for community assistance. He wondered what happened to the interest, if the PCE fund was swept.

Mr. Teal felt that, although the swept occurred on June 30, no money would be moved for a while.

#

ADJOURNMENT

[4:53:26 PM](#)

The meeting was adjourned at 4:53 p.m.